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The Partnerships Act S



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THE PARTNERSHIPS ACT

*R.S.O. 1950 Ch. 270*

THE LIMITED PARTNERSHIPS ACT

*R.S.O. 1950 Ch. 208*

*and 4-5 Elizabeth II, 1956, Ch. 41*

THE PARTNERSHIPS REGISTRATION ACT

*R.S.O. 1950 Ch. 271*

*Published by*

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*All persons making use of this pamphlet are reminded that this printing of the Partnerships and related Acts has no legislative sanction, that it is produced only for the convenience of students and others, and that the specified chapters of the Revised Statutes of Ontario 1950 and any subsequent amendments should be consulted for all purposes of interpreting and applying the law.*



# THE PARTNERSHIPS ACT

*R.S.O. 1950 Chapter 270*

## Interpretation

### **"Business"**

1. (1) In this Act, —

(a) "Business" includes every trade, occupation and profession;

### **"Court"**

(b) "Court" includes every court and judge having jurisdiction in the case.

### **"Insolvent" and "Insolvency"**

- (2) A person is deemed to be "insolvent" within the meaning of this Act if he is adjudged a bankrupt under the Bankruptcy Act (Canada), or if he makes an assignment for the general benefit of his creditors and "insolvency" has a meaning corresponding with "insolvent".

## NATURE OF PARTNERSHIP

### Definition of Partnership

2. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit, but the relation between the members of any company or association which is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act.

### Rules for Determining Existence of Partnership

3. In determining whether a partnership does or does not exist, regard shall be had to the following rules:—
- (1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.
  - (2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
  - (3) The receipt by a person of a share of the profits of a business, is prima facie evidence that he is a partner in the business, but the receipt of such a share or payment, contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular, —
    - (a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing

profits of a business does not of itself make him a partner in the business or liable as such;

- (b) a contract for the remuneration of a servant or agent or a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
- (c) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
- (d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender is to receive a rate of interest varying with the profits, or is to receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing and signed by or on behalf of all parties thereto;
- (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such.

### **Insolvency**

- 4. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 3, or of any buyer of the goodwill in consideration of a share of the profits of the business becoming insolvent or entering into an arrangement to pay his creditors less than one hundred cents in the dollar or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for until the claims of the other creditors of the borrower or buyer, for valuable consideration in money or money's worth, are satisfied.

### **Meaning of "Firm"**

- 5. Persons who have entered into partnership with one another are, for the purposes of this act, called collectively a firm, and the name under which their business is carried on is called the firm name.

## **RELATION OF PARTNERS TO PERSONS DEALING WITH THEM**

### **Power of Partner to Bind Firm**

- 6. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners unless the partner so acting has in fact no authority to act for the firm in the particular matter, and



the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

### **Partners Bound by Acts on Behalf of Firm**

7. An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners, provided that this section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

### **Partner Using Credit of Firm for Private Purposes**

8. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by an individual partner.

### **Effect of Notice that Firm not bound by Act of Partner**

9. If it is agreed between the partners to restrict the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

### **Liability of Partners**

10. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

### **Liability of the Firm for Wrongs**

11. Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner of the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

### **Misapplication of Money or Property Received for or in Custody of the Firm**

12. In the following cases, namely, —
  - (a) where one partner, acting within the scope of his apparent authority, receives the money or property of a third person and misapplies it; and
  - (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,the firm is liable to make good the loss.

### **Liability for Wrongs Joint and Several**

13. Every partner is liable jointly with his co-partners and also severally for everything for which the firm, while he is a partner therein, becomes liable under section 11 or 12.

### **Improper Employment of Trust**

#### **Property for Partnership Purposes**

14. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein, but
- (a) this section does not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
  - (b) nothing in this section prevents trust money from being followed and recovered from the firm if still in its possession or under its control.

### **Persons Liable by "Holding Out"**

15. (1) Every person who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to any person who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the persons so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

### **Continuing Business After Death of Partner**

- (2) Where after a partner's death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as part thereof does not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death.

### **Admissions and Representations of Partners**

16. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

### **Notice to Acting Partner to be Notice to the Firm**

17. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

### **Liability Commences with Admission to Firm**

18. (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.



## **Liability for Debts, etc.,**

### **Incurred before Retirement**

- (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

### **Agreement Discharging Retiring Partner**

- (3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

## **Revocation of Continuing**

### **Guaranty by Change in Firm**

19. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transaction of which the guaranty or obligation was given.

## **RELATION OF PARTNERS TO ONE ANOTHER**

### **Variation by Consent of Terms of Partnership**

20. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

### **Partnership Property**

21. (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act "partnership property", and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

### **Devolution of Land**

- (2) The legal estate or interest in any land, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

### **Co-owners of Land**

- (3) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence

of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of purchase.

### **Property Bought with Partnership Money**

22. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on the account of the firm.

### **Conversion of Land Bought with Partnership Money into Personality**

23. Where land or any heritable interest therein becomes partnership property, unless the contrary intention appears it is to be treated as between the partners, including the representatives of a deceased partner, and also as between the heirs of a deceased partner and his executors or administrators as personal or movable and not real or heritable estate.

### **Rules as to Interests and Duties of Partners**

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:—
- (1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.
  - (2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him,—
    - (a) in the ordinary and proper conduct of the business of the firm; or
    - (b) in or about anything necessarily done for the preservation of the business or property of the firm.
  - (3) A partner making, for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent per annum from the date of the payment or advance.
  - (4) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.
  - (5) Every partner may take part in the management of the partnership business.
  - (6) No partner shall be entitled to remuneration for acting in the partnership business.
  - (7) No person may be introduced as a partner without the consent of all existing partners.
  - (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.



- (9) The partnership books are to be kept at the place of business of the partnership or the principal place, if there is more than one, and every partner may, when he thinks fit, have access to and inspect and copy any of them.

### **Expulsion of Partner**

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

### **Retirement from Partnership at Will**

26. (1) Where no fixed term is agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

### **Notice of Retirement**

- (2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, is sufficient for that purpose.

### **Presumption of Continuance after Expiry of Term**

27. (1) Where a partnership, entered into for a fixed term, is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

### **Arises from Continuance of Business**

- (2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

### **Duty as to Rendering Accounts**

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative.

### **Accountability for Private Profits**

29. (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.

### **Extends to Survivors and Representatives of Deceased**

- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

### **Duty of Partner not to Compete with Firm**

30. If a partner, without the consent of the other partners, carries on

any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

### **Rights of Assignee of Share in Partnership**

31. (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

### **On Dissolution**

- (2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

## **DISSOLUTION OF PARTNERSHIP**

### **Dissolution by Expiry of Term or Notice**

32. Subject to any agreement between the partners, a partnership is dissolved,
- (a) if entered into for a fixed term, by the expiration of that term;
  - (b) if entered into for a single adventure, or undertaking, by the termination of that adventure or undertaking;
  - (c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership, in which case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

### **Dissolution by Death or Insolvency of Partner**

33. (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or insolvency of any partner.

### **Where Partner's Share Charged for Separate Debt**

- (2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

### **By Illegality of Business**

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.



## **By the Court**

35. On application by a partner the court may order a dissolution of the partnership,
- (a) when a partner is found mentally incompetent by inquisition, or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner;
  - (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
  - (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
  - (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
  - (e) when the business of the partnership can only be carried on at a loss; or
  - (f) when in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

## **Rights of Persons dealing with Firm against Apparent Members**

36. (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

## **Notice**

- (2) An advertisement in the Ontario Gazette shall be notice as to persons who had not dealings with the firm before the dissolution or change so advertised.

## **Estate of Dead or Insolvent Partner, How far Liable**

- (3) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of death, insolvency, or retirement.

## **Right to Give Notice of Dissolution**

37. On the dissolution of a partnership or retirement of a partner, any partner may publicly give notice of the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

### **Continuing Authority of Partners for Purposes of Winding Up**

38. After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise; provided that the firm is in no case bound by the acts of a partner who has become insolvent; but this proviso does not affect the liability of any person who has, after the insolvency, represented himself or knowingly suffered himself to be represented as a partner of the insolvent.

### **Rights of Partners as to Application of Partnership Property**

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representative may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

### **Apportionment of Premium on Premature Dissolution**

40. Where one partner paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term, otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless,
- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
  - (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

### **Rights where Partnership Dissolved for Fraud or Misrepresentations**

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,
- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and
  - (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and



- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

#### **Right of Out-going Partner as to Share in Profits after Dissolution**

42. (1) Where any member of a firm dies or otherwise ceases to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent per annum on the amount of his share of the partnership assets.

#### **Proviso as to Option of Remaining Partners to Purchase Share**

- (2) Where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits, but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

#### **Retiring or Deceased Partner's Share to be a Debt**

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution, or death.

#### **Rules for Distribution of Assets on Final Settlement of Accounts**

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:
- (1) Losses, including losses and deficiencies of capital, are to be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.
  - (2) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, are to be applied in the following manner and order,
    - (a) in paying the debts and liabilities of the firm to persons who are not partners therein;

- (b) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
- (c) in paying to each partner rateably what is due from the firm to him in respect to capital;
- (d) the ultimate residue, if any, is to be divided among the partners in the proportion in which profits are divisible.

#### **Saving as to Rules of Equity and Common Law**

45. The rules of equity and of common law, applicable to partnership, shall continue in force except so far as they are inconsistent with the express provisions of this Act.

#### **Act to be Subject to Rev. Stat. cc. 208, 271**

46. This Act is to be read and construed as subject to The Limited Partnerships Act and The Partnerships Registration Act.

## **THE LIMITED PARTNERSHIPS ACT**

*R.S.O. 1950, Chapter 208*

*and 4-5 Elizabeth II, 1956, Chapter 41*

#### **Formation of Limited Partnerships**

1. A limited partnership for the transaction of any brokerage, financial, mercantile, mechanical, manufacturing or other business within Ontario, except banking, the construction or operation of railways and the business of insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned.

#### **Of Whom to Consist**

2. The partnership may consist of one or more persons, who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called limited partners.

#### **Liability of General and Limited Partners**

3. General partners shall be jointly and severally responsible as general partners are by law, but limited partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital.

#### **General Partners only to Transact Business, etc.**

4. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

#### **Certificate to be Signed**

5. The persons desirous of forming such partnership shall make and each of them shall sign a certificate (Form 1), which shall contain,



- (a) the name under which the partnership business is to be carried on;
- (b) the general nature of the business intended to be carried on;
- (c) the names of all the general and limited partners, distinguishing which are general and which are limited partners, and their usual places of residence;
- (d) the amount of capital which each limited partner has contributed;
- (e) the time when the partnership is to commence and the time at which it is to terminate; and
- (f) the principal place of business of the partnership.

### **Execution**

6. The certificate shall be signed by the persons forming the partnership before a notary public who shall certify to the execution of the same.

### **Where to be Filed**

7. The certificate so signed and certified shall be filed with the registrar of the registry division in which the principal place of business named in the certificate is situate, and shall be recorded by him in the same manner as a declaration is recorded under section 11 of The Partnerships Registration Act.

### **Declaration not Required where Certificate Filed**

- 7a. Where a certificate is filed under this Act, a declaration is not required to be filed under The Partnerships Registration Act.

### **Fees**

8. The registrar shall be entitled to receive for filing and recording the certificate and for searches the same fees as those provided in section 11 of The Partnerships Registration Act.

### **Partnership not Formed until Certificate Filed**

9. No such partnership shall be deemed to have been formed until the certificate has been made, certified, and filed, and if any false statement is made in the certificate, all the members of the partnership shall be liable for all the engagements thereof as general partners.

### **Certificates of Renewal or Continuance**

10. Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, filed and recorded in the manner herein required for its original formation, and every partnership otherwise renewed or continued shall be deemed a general partnership.

### **What Alterations to be Deemed a Dissolution**

11. Every alteration made in the partnership name, in the names of the partners, in the nature of the business, or in the capital or

shares thereof, or in any other manner specified in the original certificate shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made shall be deemed a general partnership, unless renewed as a limited partnership according to section 10.

### **Partnership Name**

12. The business of the partnership shall be conducted under a name in which the names of one or more of the general partners shall be used, and unless any limited partner whose name is used in the partnership name is clearly designated as a limited partner in a line immediately beneath the name of the partnership upon letter-heads, confirmations to customers and statements of account, he shall be deemed a general partner.

### **Restrictions upon Withdrawal of Capital of Limited Partners**

13. No part of the sum which a limited partner has contributed to the capital shall be withdrawn by him, or paid or transferred to him as dividends, profits or otherwise, during the continuance of the partnership; but any partner may annually receive interest at a rate not exceeding five per cent per annum on the sum so contributed by him if the payment of such interest does not reduce the original amount of the capital, and if, after the payment of such interest, any profits remain to be divided he may also receive his share of such profits.

### **When Limited Partner Liable to Refund**

14. If by the payment of interest or profits to a limited partner the original capital has been reduced he shall be liable to restore the amount by which his share of the capital has been so reduced with interest.

### **Rights and Liabilities of Limited Partners**

15. A limited partner may from time to time examine into the state and progress of the partnership business, and may advise as to its management, and he shall only become liable as a general partner if, in addition to the foregoing he takes part in the control of the business.

### **General Partners Liable to Account**

16. The general partners shall be liable to account to each other and to the limited partners for their management of the business in like manner as other partners.

### **Creditors Preferred to Limited Partners**

17. In case of the insolvency or bankruptcy of the partnership a limited partner shall not, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied.



**No Premature Dissolution without Notice, etc.**

18. No dissolution of such partnership by the acts of the parties shall take place before the time specified in the certificate of its formation or of its renewal until a notice of the dissolution has been filed in the office in which the original certificate was filed and has been published once in each week, for three weeks, in a newspaper published in the county or district where the partnership has its principal place of business and for the same time in the Ontario Gazette.

**FORM 1**

**(Section 5)**

**CERTIFICATE OF LIMITED PARTNERSHIP**

We, the undersigned, do hereby certify that we have entered into partnership under the name of (B.D. & Co.) as (Grocers and Commission Merchants,) which firm consists of (A. B.) residing usually at \_\_\_\_\_, and (C. D.) residing usually at \_\_\_\_\_, as General Partners; and (E. F.), residing usually at \_\_\_\_\_, and (G. H.), residing usually at \_\_\_\_\_, as Limited Partners. The said (E. F.) having contributed \$ \_\_\_\_\_ and the said (G. H.) \$ \_\_\_\_\_ to the Capital of the Partnership.

The principal place of business of the Partnership is at \_\_\_\_\_

The said Partnership is to commence on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and is to terminate on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed) A.B.

C.D.

E.F.

G.H.

Signed in the presence of me,

L.M.,

Notary Public.

# THE PARTNERSHIPS REGISTRATION ACT

*R.S.O. 1950, Chapter 271*

## **Persons in Partnership to Deliver a Declaration to the Registrar**

1. (1) Persons associated in partnership for trading, manufacturing or mining purposes shall cause to be filed with the registrar of the registry division in which they carry on or intend to carry on business a declaration in writing (Form 1), signed by all the members of the partnership.

## **Absent Parties**

- (2) When at the time of making the declaration any member is absent from the place where the partnership carries on or intends to carry on business the declaration shall be signed by the members present in their own names and also for any absent member, under his special authority to that effect, and such special authority shall be annexed to the declaration and shall be filed with the registrar at the same time as the declaration.

## **Requisites of Declaration**

2. The declaration shall state,
  - (a) the names, surnames, additions and residences of every partner;
  - (b) the name under which they carry on or intend to carry on business;
  - (c) the time during which the partnership has subsisted;
  - (d) that the persons therein named are the only members of the partnership; and
  - (e) which of the partners are of the full age of 21 years and, where any of the partners are under the full age of 21 years, the date of birth of each of such partners.

## **When Declaration to be Filed**

3. Every declaration shall be filed within 60 days next after the formation of the partnership or, in the case of a declaration under section 8, within 60 days of the time when the name or designation is first used, provided that a judge of a county or district court may extend the period for filing upon being satisfied by affidavit or affidavits, which shall be filed with the declaration, that the failure to register arose from misadventure, ignorance or some other cause which constitutes a reasonable excuse and that the partners or other declarant have acted and are acting in good faith.

## **Declaration where Change in Partnership**

4. (1) A similar declaration shall in like manner be filed whenever any change takes place in the membership of the partnership or in the name under which it carries on business, and every such declaration shall state the change in the membership of the partnership or in its name.



### **When to be Filed**

- (2) The declaration shall be filed within 60 days after the change takes place.

### **Effect of Allegations in the Declaration**

5. The statements made in any declaration shall not be controvertible by any person who has signed the same, nor as against any person not being a member of the partnership by any person who has signed the same, or who was really a member of the partnership therein mentioned at the time the declaration was made.

### **Declaration of Dissolution of Partnership**

6. Upon the dissolution of a partnership any or all of the persons who compose the partnership may sign a declaration (Form 2), certifying the dissolution of the partnership.

### **Position of Persons Signing Declaration**

7. (1) Until a new declaration is made and filed by him, or by his partners or any of them, no person who signed the declaration filed shall be deemed to have ceased to be a partner.

### **Liability of Partners Failing to Make Declaration**

- (2) Nothing herein shall exempt from liability any person who, being a partner, fails to make and file the prescribed declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and, if judgment is recovered against them, he may be sued on the original cause of action upon which the judgment was recovered.

### **Where Business Name Indicates Plurality**

8. (1) Every person engaged in business for trading, manufacturing or mining purposes who is not associated in partnership with any other person but uses as his business style,
  - (a) some name or designation other than his own name; or
  - (b) his own name with the addition of the expression "and company" or some other expression indicating a plurality of members in the firm,shall sign a declaration and file it with the registrar of the registry division in which he carries on or intends to carry on business.

### **Requisites of Declaration**

- (2) The declaration shall state,
  - (a) the name, surname, addition and residence of the person making the declaration;
  - (b) the name or designation under which he carries on or intends to carry on business, and the date when the name or designation was first used by him;
  - (c) that no other person is associated with him in partnership; and
  - (d) that he is of the full age of 21 years or the date of his birth if he is under the age of 21 years.

### **Failure to File Declaration**

9. (1) No partnership in respect of which a declaration has not been filed as required by this Act and no member thereof shall be capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract made in connection with the business carried on by the partnership.
- (2) No person who has failed to file a declaration as required by section 8 shall be capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract made in connection with the business in respect of which a declaration is required to be filed.

### **Penalty**

10. Every person who fails to comply with any of the provisions of this Act or who knowingly makes any false statement in any declaration signed or filed by him under this Act shall be guilty of an offense and on summary conviction shall be liable to a penalty of not less than \$10 and not more than \$100.

### **Registrar to Record Declaration**

11. (1) The registrar shall enter the declarations, in the order in which they are received, in a book to be kept by him for that purpose, and such book shall be open to the public for inspection without charge during office hours.

### **Registrar's Fee for Filing**

- (2) The registrar, for filing and entering a declaration, shall be entitled to receive from the person filing the declaration, the following fee:
  - If the declaration contains 200 words or less — \$1;
  - If the declaration contains more than 200 words — \$1 and for each 100 words after the first 200 — 10 cents.
- (3) The registrar shall keep two alphabetical index books of all declarations filed with him.

### **Form of "Firm Index"**

- (4) In one of such books, herein called the "Firm Index", the registrar shall enter in alphabetical order the names of the firms in respect of which declarations have been filed with him, and shall place opposite each entry the names of the persons composing the firm, and the date of the receipt by him of the declaration, in the manner shown in Form 3.

### **Form of "Individual Index"**

- (5) In the second of such books, herein called the "Individual Index", the registrar shall enter in alphabetical order the names of the members of each firm, and shall place opposite the entry the name of the firm of which each person is a member, and the date of the receipt of the declaration in the manner shown in Form 4.

### **Registrar's Fees for Certain Services**

- (6) The registrar shall be entitled to the following fees for searches:
  - For searching in Firm Index — each firm 25 cents;



For searching in Individual Index — each name 10 cents;  
For each certificate when required — 25 cents;  
For each certificate on a duplicate when required—50 cents.

### Who to Furnish Registry Books

12. The books required for the purposes of this Act shall be furnished by the treasurer of the municipality whose duty it is to furnish registry books, or in the case of his default, by the registrar in the same manner as other registry books.

### Butter or Cheese Manufacturing Associations Excepted

13. This Act shall not apply to associations of individuals formed for the manufacture of butter or cheese where such individuals contribute produce from their dairies for that purpose.

### Rights of Partners inter se

14. Nothing in this Act shall affect the rights of partners with regard to each other.

## FORM 1 (Section 1)

### DECLARATION OF PARTNERSHIP

County (or District) of \_\_\_\_\_

We \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_ (occupation)

and \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_ (occupation)

hereby certify

1. That we have carried on and intend to carry on (or we intend to carry on) trade and business as \_\_\_\_\_  
at \_\_\_\_\_ in partnership, under the name of \_\_\_\_\_

2. That the said partnership has subsisted since the \_\_\_\_\_ day  
of \_\_\_\_\_, 19 \_\_\_\_\_.

3. That we are and have been since the said day the only members  
of the said partnership.

4. That the said \_\_\_\_\_ are of the full  
age of 21 years.

(Where any of the partners are under the age of 21 years, add)

5. That the said \_\_\_\_\_ was born on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Witness our hands, at \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_, 19 \_\_\_\_\_.

A.B.  
C.D.

FORM 2  
(Section 6)

# DECLARATION OF DISSOLUTION OF PARTNERSHIP

County (or District) of \_\_\_\_\_

I, \_\_\_\_\_, formerly a member of the firm  
carrying on business as \_\_\_\_\_,  
at \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_,  
under the name of \_\_\_\_\_ do hereby certify  
that the said partnership was on the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_, dissolved.

Witness my hand, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_.

A.B.

## FORM 3 (Section 11) FIRM INDEX

| NAME OF FIRM              | NAMES OF PERSONS<br>COMPOSING THE FIRM  | DATE OF FILING<br>DECLARATION |
|---------------------------|---|-------------------------------|
| Abbott, Black & Co.       | George Abbott, John Black,<br>Edward Cook   | 10th February, 19_____.       |
| Bernard, Green &<br>Jones | John Bernard, Edward Green,<br>John Jones   | 12th February, 19_____.       |
| Cook (Thos.) & Co.        | Thomas Cook, James Wilson   | 14th February, 19_____.       |
| Dadson, William           | William Dadson, Thos. Jones,<br>Robert Watson, William<br>Wilberforce, Jas. Johnson | 14th February, 19_____.       |
| Dick & Co.                | Richard Dick  | 15th May, 19_____.            |
| Dow (Wm.) & Sons          | William Dow   | 19th May, 19_____.            |

FORM 4  
(Section 11)  
INDIVIDUAL INDEX

| NAME OF<br>INDIVIDUAL | NAME OF FIRM OF<br>WHICH A MEMBER | DATE OF FILING<br>DECLARATION |
|-----------------------|-----------------------------------|-------------------------------|
| Abbott, George        | Abbott, Black & Co.               | 10th February, 19.....        |
| Black, John           | Abbott, Black & Co.               | 10th February, 19.....        |
| Bernard, John         | Bernard, Green & Jones            | 12th February, 19.....        |
| Cook, Edward          | Abbott, Black & Co.               | 10th February, 19.....        |
| Cook, Thomas          | Thomas Cook & Co.                 | 14th February, 19.....        |
| Dadson, William       | William Dadson                    | 14th February, 19.....        |
| Dick, Richard         | Dick & Co.                        | 15th May, 19.....             |
| Dow, William          | Wm. Dow & Sons                    | 19th May, 19.....             |





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The Partnerships Act

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